

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

555H0018

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1001** - 02/08/2002

Introduced by: Representatives Brown (Richard), Glenski, Peterson (Jim), and Smidt and  
Senators McCracken, Dennert, and Reedy at the request of the Interim  
Streamlined Sales Tax Project Task Force

1 FOR AN ACT ENTITLED, An Act to ratify the Uniform Sales and Use Tax Administration Act  
2 and to implement the uniform and simplified features proposed by the Streamlined Sales Tax  
3 Project.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. As used in this Act:

6 (a) "Agreement," means the Streamlined Sales and Use Tax Agreement;

7 (b) "Certified automated system," means software certified jointly by the states that are  
8 signatories to the agreement to calculate the tax imposed by each jurisdiction on a  
9 transaction, determine the amount of tax to remit to the appropriate state, and  
10 maintain a record of the transaction;

11 (c) "Certified service provider," means an agent certified jointly by the states that are  
12 signatories to the agreement to perform all of the seller's sales tax functions;

13 (d) "Person," means an individual, trust, estate, fiduciary, partnership, limited liability  
14 company, limited liability partnership, corporation, or any other legal entity;



(e) "Sales tax," means the tax levied under chapter 10-45;

(f) "Seller," means any person making sales, leases, or rentals of personal property or services;

(g) "State," means any state of the United States and the District of Columbia;

(h) "Use tax," means the tax levied under chapter 10-46.

Section 2. The Legislature finds that this state should enter into an agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce.

Section 3. The Department of Revenue is authorized and directed to enter into the Streamlined Sales and Use Tax Agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the agreement, the Department of Revenue is authorized to act jointly with other states that are members of the agreement to establish standards for certification of a certified service provider and certified automated system and establish performance standards for multistate sellers.

The Department of Revenue is further authorized to take other actions reasonably required to implement the provisions set forth in this Act. Other actions authorized by this Act include, but are not limited to, the adoption of rules and regulations and the joint procurement, with other member states, of goods and services in furtherance of the cooperative agreement.

The secretary of revenue or the secretary's designee and two legislators are authorized to represent this state before the other states that are signatories to the agreement. The Executive Board of the Legislative Research Council shall appoint one senator and one representative to represent this state.

Section 4. No provision of the agreement authorized by this Act in whole or part invalidates

1 or amends any provision of the law of this state. Adoption of the agreement by this state does  
2 not amend or modify any law of this state. Implementation of any condition of the agreement in  
3 this state, whether adopted before, at, or after membership of this state in the agreement, must  
4 be by the action of this state.

5 Section 5. The Department of Revenue shall not enter into the Streamlined Sales and Use  
6 Tax Agreement unless the agreement requires each state to abide by the following requirements:

7 (a) The agreement must set restrictions to achieve over time more uniform state rates  
8 through the following:

9 (1) Limiting the number of state rates.

10 (2) Limiting the application of maximums on the amount of state tax that is due on  
11 a transaction.

12 (3) Limiting the application of thresholds on the application of state tax.

13 (b) The agreement must establish uniform standards for the following:

14 (1) The sourcing of transactions to taxing jurisdictions.

15 (2) The administration of exempt sales.

16 (3) The allowances a seller may take for bad debts.

17 (4) Sales and use tax returns and remittances.

18 (c) The agreement must require states to develop and adopt uniform definitions of sales  
19 and use tax terms. The definitions must enable a state to preserve its ability to make  
20 policy choices not inconsistent with the uniform definitions.

21 (d) The agreement must provide a central, electronic registration system that allows a  
22 seller to register to collect and remit sales and use taxes for all signatory states.

23 (e) The agreement must provide that registration with the central registration system and  
24 the collection of sales and use taxes in the signatory states will not be used as a factor

1 in determining whether the seller has nexus with a state for any tax.

2 (f) The agreement must provide for reduction of the burdens of complying with local  
3 sales and use taxes through the following:

4 (1) Restricting variances between the state and local tax bases.

5 (2) Requiring states to administer any sales and use taxes levied by local  
6 jurisdictions within the state so that sellers collecting and remitting these taxes  
7 will not have to register or file returns with, remit funds to, or be subject to  
8 independent audits from local taxing jurisdictions.

9 (3) Restricting the frequency of changes in the local sales and use tax rates and  
10 setting effective dates for the application of local jurisdictional boundary  
11 changes to local sales and use taxes.

12 (4) Providing notice of changes in local sales and use tax rates and of changes in  
13 the boundaries of local taxing jurisdictions.

14 (i) The agreement must outline any monetary allowances that are to be provided by the  
15 states to sellers or certified service providers.

16 (j) The agreement must require each state to certify compliance with the terms of the  
17 agreement prior to joining and to maintain compliance, under the laws of the member  
18 state, with all provision of the agreement while a member.

19 (k) The agreement must require each state to adopt a uniform policy for certified service  
20 providers that protects the privacy of consumers and maintains the confidentiality of  
21 tax information.

22 (l) The agreement must provide for the appointment of an advisory council of private  
23 sector representatives and an advisory council of nonmember state representatives to  
24 consult with in the administration of the agreement.

1       Section 6. The agreement authorized by this Act is an accord among individual cooperating  
2       sovereigns in furtherance of their governmental functions. The agreement provides a mechanism  
3       among the member states to establish and maintain a cooperative, simplified system for the  
4       application and administration of sales and use taxes under the duly adopted law of each member  
5       state.

6       Section 7. A certified service provider is the agent of a seller, with whom the certified service  
7       provider has contracted, for the collection and remittance of sales and use taxes. As the seller's  
8       agent, the certified service provider is liable for sales and use tax due each member state on all  
9       sales transactions it processes for the seller except as set out in this section.

10      A seller that contracts with a certified service provider is not liable to the state for sales or  
11      use tax due on transactions processed by the certified service provider unless the seller  
12      misrepresented the type of items it sells or committed fraud. In the absence of probable cause to  
13      believe that the seller has committed fraud or made a material misrepresentation, the seller is not  
14      subject to audit on the transactions processed by the certified service provider. A seller is subject  
15      to audit for transactions not processed by the certified service provider. The member states  
16      acting jointly may perform a system check of the seller and review the seller's procedures to  
17      determine if the certified service provider's system is functioning properly and the extent to which  
18      the seller's transactions are being processed by the certified service provider.

19      A person that provides a certified automated system is responsible for the proper functioning  
20      of that system and is liable to the state for underpayments of tax attributable to errors in the  
21      functioning of the certified automated system. A seller that uses a certified automated system  
22      remains responsible and is liable to the state for reporting and remitting tax.

23      A seller that has a proprietary system for determining the amount of tax due on transactions  
24      and has signed an agreement establishing a performance standard for that system is liable for the

1 failure of the system to meet the performance standard.

2 Section 8. Sections 1 to 7, inclusive, of this Act shall be known as and referred to as the  
3 Uniform Sales and Use Tax Administration Act.

4 Section 9. That § 10-1-44.1 be repealed.

5 ~~— 10-1-44.1. The Governor may, for the purpose of entering into a compact, negotiate and~~  
6 ~~enter into a compact with officials of other states for the development, implementation, and~~  
7 ~~administration of a simplified sales and use tax collection system. The compact shall conform~~  
8 ~~generally to the provisions of chapter 1-24 relating to the joint exercise of governmental powers~~  
9 ~~with other public agencies. The compact shall provide for the collection, reporting, auditing, and~~  
10 ~~distribution of taxes imposed under chapters 10-45 and 10-46. The compact shall provide for the~~  
11 ~~joint selection of persons to act as agents of the compact states for the collection and remittance~~  
12 ~~of taxes imposed under chapters 10-45 and 10-46.~~

13 Section 10. That § 10-1-44.2 be repealed.

14 ~~— 10-1-44.2. If the Governor enters into a compact pursuant to § 10-1-44.1, the Governor may~~  
15 ~~direct the secretary of revenue to enter into a joint contract with any person to act as an agent~~  
16 ~~of South Dakota for the collection and remittance of taxes imposed under chapters 10-45 and~~  
17 ~~10-46.~~

18 Section 11. That § 10-1-44.3 be amended to read as follows:

19 10-1-44.3. ~~Notwithstanding the provisions of § 10-1-28.2, if the Governor enters into a~~  
20 ~~compact pursuant to § 10-1-44.1, the Governor may direct~~ As required by the agreement entered  
21 into pursuant to section 3 of this Act, the secretary of revenue ~~to~~ may release lists of persons  
22 licensed under chapters 10-45 and 10-46 who are exempt from taxes imposed under chapters  
23 10-45 and 10-46 to the extent necessary to verify each person's exempt status.

24 Section 12. That § 10-1-44.4 be repealed.

~~10-1-44.4. Any compact entered into by the Governor pursuant to § 10-1-44.1 is effective upon the Governor's signature and ratification by the Legislature.~~

Section 13. That § 10-45-1 be amended to read as follows:

10-45-1. Terms used in this chapter mean:

(1) "Agricultural purposes," the producing, raising, or growing and harvesting of food or fiber upon agricultural land, including dairy products, livestock, and crops. The services of custom harvesters, chemical applicators, fertilizer spreaders, hay grinders, and cultivators are considered agricultural purposes;

(2) "Business," any activity engaged in by any person or caused to be engaged in by ~~him~~ such person with the object of gain, benefit, or advantage, either direct or indirect;

(3) "Delivery charges," charges by the retailer for preparation and delivery to a location designated by the purchaser of tangible personal property or services including transportation, shipping, postage, handling, crating, and packing;

(4) "Gross receipts," the amount received in money, credits, property, or other money's worth in consideration of sales at retail within this state. No deduction may be taken for the cost of the property sold, the cost of materials used, the cost of labor or services purchased, amounts paid for interest or discounts, or any other expenses whatsoever, nor may any deduction be allowed for losses. Gross receipts do not include any fees or other interest imposed by a retailer for late charges on overdue accounts, no account, and nonsufficient funds checks. Discounts for any purpose allowed and taken on sales may not be included as gross receipts, nor may the sale price of property returned by customers when the full sale price thereof is refunded either in cash or by credit. If any tangible personal property is taken in trade or in a series of trades as a credit or part payment of a retail sale taxable under this chapter,

1 ~~and the tangible personal property taken in trade will be subject to the sales tax~~  
2 ~~imposed by this chapter when sold, the credit or trade-in value allowed by the retailer~~  
3 ~~may not be included as gross receipts. On all sales made under conditional sales~~  
4 ~~contract, or under other forms of sale wherein the payment of the principal sum is~~  
5 ~~extended over a period longer than sixty days from the date of sale, only the portion~~  
6 ~~of the sale amount that has actually been received in cash by the retailer during each~~  
7 ~~reporting period is subject to the tax imposed by this chapter~~ total amount or  
8 consideration, including cash, credit, property, and services, for which tangible  
9 personal property or services are sold, leased, or rented, valued in money, whether  
10 received in money or otherwise, without any deduction for the following:

- 11 (a) The retailer's cost of the property or service sold;
- 12 (b) The cost of materials used, labor or service cost, interest, losses, all costs of  
13 transportation to the retailer, all taxes imposed on the retailer, and any other  
14 expense of the retailer;
- 15 (c) Except as provided in chapter 10-46A or 10-46B, charges by the retailer for  
16 any services necessary to complete the sale whether or not separately stated,  
17 including delivery charges; and
- 18 (d) The value of exempt tangible personal property whether or not separately  
19 stated on the invoice, billing, or similar document given to the purchaser where  
20 taxable and exempt tangible personal property have been bundled together and  
21 sold by the retailer as a single product or piece of merchandise;

22 Gross receipts do not include:

- 23 (a) Discounts, including cash, term, or coupons that are not reimbursed by a third  
24 party that are allowed by a retailer and taken by a purchaser on a sale;



(b) Interest, financing, and carrying charges from credit extended on the sale of tangible personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser; and

(c) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;

~~(4)~~(5) "Person," any individual, firm, copartnership, joint adventure, association, limited liability company, corporation, municipal corporation, estate, trust, business trust, receiver, the State of South Dakota and its political subdivisions, or any group or combination acting as a unit;

~~(5)~~(6) "Relief agency," the state, and county, municipality or district thereof, or any agency engaged in actual relief work;

~~(6)~~(7) "Retail sale" or "sale at retail," ~~the sale of either tangible personal property or services, or both, to the consumer or user thereof, or to any person for any purpose other than for resale; the sale of natural or artificial gas, electric energy, water, and communication service to consumers or users; and the sale of tickets or admissions to places of amusement or athletic contests~~ any sale, lease, or rental for any purpose other than for resale, sublease, or subrent;

~~(7)~~(8) "Retailer," ~~every~~ any person engaged in the business of selling tangible goods, wares, or merchandise at retail, or the furnishing of gas, electricity, water, and communication service, and tickets or admissions to places of amusement and athletic events as provided in this chapter. ~~"Retailer"~~ The term also includes ~~every~~ any person subject to the tax imposed by §§ 10-45-4 and 10-45-5. The isolated or occasional sale of tangible personal property at retail by a person who does not hold himself or herself out as engaging in the business of selling such tangible personal property at retail does

1 not constitute such person a retailer;

2 ~~(8)~~(9) "Sale," any transfer, exchange, or barter, conditional or otherwise, in any manner or  
3 by any means whatsoever, for a consideration.

4 Section 14. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 For purposes of the tax imposed by this chapter, gross receipts do not include any fees or  
7 other interest imposed by a retailer for late charges on overdue accounts, no account, or  
8 nonsufficient funds checks.

9 Section 15. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as  
10 follows:

11 For purposes of the tax imposed by this chapter, the sale price of property returned by  
12 customers are not gross receipts if the full sale price thereof is refunded either in cash or by  
13 credit.

14 Section 16. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as  
15 follows:

16 For purposes of the tax imposed by this chapter, if any tangible personal property is taken  
17 in trade or in a series of trades as a credit or part payment of a retail sale taxable under this  
18 chapter, and the tangible personal property taken in trade is subject to the sales tax imposed by  
19 this chapter when sold, the credit or trade-in value allowed by the retailer may not be included  
20 as gross receipts.

21 Section 17. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as  
22 follows:

23 For purposes of the tax imposed by this chapter, on any sale made under a conditional sales  
24 contract, or under other forms of sale wherein the payment of the principal sum is extended over

1 a period longer than sixty days from the date of sale, only the portion of the sale amount that has  
2 actually been received in cash by the retailer during each reporting period is subject to the tax  
3 imposed by this chapter.

4 Section 18. That § 10-45-3 be amended to read as follows:

5 10-45-3. There is hereby imposed a tax of ~~three~~ four percent on the gross receipts from the  
6 sale or resale of farm machinery and attachment units other than replacement parts; or irrigation  
7 equipment used exclusively for agricultural purposes by licensed South Dakota retailers;  
8 ~~provided, however, that whenever.~~ However, any trade-in or exchange of used farm machinery  
9 is involved in the transaction, the tax ~~shall~~ is only be due and shall be collected only on the cash  
10 difference.

11 Section 19. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as  
12 follows:

13 There are exempted from the provisions of this chapter and the tax imposed by it, gross  
14 receipts from the sale of parts or repairs on machinery or equipment which are clearly identifiable  
15 as used primarily for agricultural purposes, including irrigation equipment, if the part replaces  
16 a farm machinery or irrigation equipment part assigned a specific or generic part number by the  
17 manufacturer of the farm machinery or irrigation equipment.

18 Section 20. That § 10-45-5 be amended to read as follows:

19 10-45-5. There is imposed a tax at the rate of ~~three~~ four percent upon the gross receipts of  
20 any person from engaging in the business of leasing farm machinery or irrigation equipment used  
21 for agricultural purposes and four percent upon the gross receipts of any person from engaging  
22 or continuing in any of the following businesses or services in this state: abstracters; accountants;  
23 architects; barbers; beauty shops; bill collection services; blacksmith shops; car washing; dry  
24 cleaning; dyeing; exterminators; garage and service stations; garment alteration; cleaning and

1 pressing; janitorial services and supplies; specialty cleaners; laundry; linen and towel supply;  
2 membership or entrance fees for the use of a facility or for the right to purchase tangible personal  
3 property or services; photography; photo developing and enlarging; tire recapping; welding and  
4 all repair services; cable television; and rentals of tangible personal property except leases of  
5 tangible personal property between one telephone company and another telephone company,  
6 motor vehicles as defined by § 32-5-1 leased under a single contract for more than twenty-eight  
7 days and mobile homes ~~provided, however, that.~~ However, the specific enumeration of  
8 businesses and professions made in this section does not, in any way, limit the scope and effect  
9 of § 10-45-4.

10 Section 21. That § 10-45-5.3 be amended to read as follows:

11 10-45-5.3. There is imposed, at the rate of ~~three~~ four percent, an excise tax on the gross  
12 receipts of any person engaging in oil and gas field services (group no. 138) as enumerated in  
13 the Standard Industrial Classification Manual, 1987, as prepared by the Statistical Policy Division  
14 of the Office of Management and Budget, Office of the President.

15 Section 22. That § 10-45-8 be amended to read as follows:

16 10-45-8. There is imposed a tax of four percent upon the gross receipts from all sales of  
17 tickets or admissions to places of amusement and athletic contests or events, except as otherwise  
18 provided in this chapter.

19 Section 23. That § 10-45-24 be amended to read as follows:

20 10-45-24. Each retailer or person engaging in a business in this state whose receipts are  
21 subject to sales tax shall file with the Department of Revenue, an application for a permit. Each  
22 application shall be made on a form prescribed by the secretary of revenue and shall require the  
23 name under which the applicant transacts or intends to transact business, the location of each  
24 business, and other information as the secretary of revenue may require. The application shall be

1 signed by the owner, if a natural person; by a member or partner, if an association or partnership;  
2 or by an executive officer or a person specifically authorized by the corporation to sign the  
3 application, if a corporation, to which shall be attached the written evidence of the person's  
4 authority. The applicant shall have a permit for each place of business, unless the secretary of  
5 revenue grants a request for a statewide permit. A statewide permit may be granted if the  
6 applicant demonstrates the ability to comply with the filing, auditing, and record-keeping  
7 requirements specified in rules promulgated pursuant to § 10-45-47.1 for each location specified  
8 in the application.

9 Any seller registering under the agreement as defined in section 1 of this Act shall be  
10 registered in this state, provided this state has entered into the agreement as provided in section  
11 3 of this Act. Any seller who is registered under such agreement is not required to sign the  
12 registration application and may register through an agent. Any seller who is registered under  
13 such agreement may cancel its registration at any time, but is liable for remitting any sales tax  
14 previously collected.

15 Section 24. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as  
16 follows:

17 In computing the tax to be remitted under this chapter as the result of any transaction, the  
18 tax amount shall be carried to the third decimal place. Amounts of tax less than one-half of one  
19 cent shall be disregarded and amounts of tax of one-half cent or more shall be considered an  
20 additional cent.

21 Section 25. That § 10-45-30 be amended to read as follows:

22 ~~10-45-30. Taxes paid on gross receipts represented by accounts found to be worthless and~~  
23 ~~actually charged off for income tax purposes, may be credited upon a subsequent payment of the~~  
24 ~~tax herein provided; if such accounts are thereafter collected by the retailer, a tax shall be paid~~

1 ~~upon the amount so collected.~~ For purposes of this chapter, a bad debt is any portion of the  
2 purchase price of a transaction that a seller has reported as taxable and for which the seller  
3 legally claims as a bad debt deduction for federal income tax purposes. In computing the amount  
4 of tax due, a seller may deduct bad debts from the total amount upon which the tax is calculated  
5 for any return. Any deduction taken or refund paid which is attributed to bad debts may not  
6 include interest. Bad debts include worthless checks, worthless credit card payments, and  
7 uncollectible credit accounts. Bad debts do not include financing charges or interest, sales or use  
8 taxes charged on the purchase price, uncollectible amounts on property that remain in the  
9 possession of the seller until the full purchase price is paid, expenses incurred in attempting to  
10 collect any debt, debts sold, or assigned to third parties for collection, and repossessed property.  
11 No bad debt deduction may be claimed by any person that has purchased accounts receivable for  
12 collection unless the person is a successor that has acquired the entire business of the seller that  
13 incurred the bad debt.

14 Bad debts shall be deducted within twelve months following the month in which the bad debt  
15 has been charged off for federal income tax purposes. If a deduction is taken for a bad debt and  
16 the seller subsequently collects the debt in whole or in part, the tax on the amount so collected  
17 shall be paid and reported on the next return due after the collection.

18 Notwithstanding the provisions of § 10-59-22, a seller may obtain a refund of tax on any  
19 amount of bad debt that exceeds the amount of taxable sales within the twelve-month period  
20 defined by that bad debt. A refund under this section may not include interest.

21 If a seller's filing responsibilities have been assumed by a certified service provider as defined  
22 in section 1 of this Act, the service provider may claim, on behalf of the seller, any bad debt  
23 allowance provided by this section. The service provider shall credit or refund the full amount  
24 of any bad debt allowance or refund received to the seller.

Section 26. That § 10-45-61 be amended to read as follows:

10-45-61. Notwithstanding § 10-54-1, a seller, who possesses ~~a resale~~ an exemption certificate from a purchaser of tangible personal property or services which indicates the items or services being purchased are ~~for resale in the regular course of business~~ exempt, may rely on the ~~resale~~ exemption certificate and not charge sales tax to the provider of the ~~resale~~ exemption certificate until the provider of the ~~resale~~ exemption certificate gives notice that the items or services being purchased are no longer ~~for resale~~ exempt by filing a new ~~resale~~ exemption certificate with the seller.

The ~~resale~~ exemption certificate shall be signed by the purchaser, provide the purchaser's name, address, and valid state ~~sales~~ tax license number, if applicable, and shall describe the types of tangible personal property and services being purchased ~~for resale~~ exempt by the purchaser ~~in the regular course of business~~. However, any person filing an electronic exemption certificate is not required to sign the exemption certificate.

The purchaser claiming the protection of a ~~resale~~ an exemption certificate is responsible for assuring that the goods and services delivered thereafter are of a type covered by the ~~resale~~ exemption certificate. If there are items covered under the ~~resale~~ exemption certificate which are not being purchased ~~for resale~~ exempt, it is the responsibility of the purchaser when ordering goods from a seller to indicate if any of the items purchased are not ~~for resale~~ exempt, and the appropriate sales tax shall be charged on the portion of the sale that is not ~~for resale~~ exempt. A seller of property or services which are generally described under the ~~resale~~ exemption certificate is not responsible for the collection of the tax unless otherwise directed by the purchaser ~~or unless the state establishes that the seller did not accept the resale certificate in good faith. Absent knowledge of circumstances by the seller which would put the holder of the resale certificate upon inquiry as to its validity, good faith does not require the seller to investigate the~~

1 ~~nature of the purchaser's business.~~

2 If the purchaser later determines there is any tax due and owing, the purchaser shall remit the  
3 tax owed by the purchaser to the state. If the purchaser ~~purchases for resale but later elects not~~  
4 ~~to resell the goods and consumes or uses them~~ makes an exempt purchase and later determines  
5 that the goods or services purchased are not exempt, the purchaser shall report the transaction  
6 and pay the use tax on the next filing of ~~his~~ the purchaser's return.

7 Any purchaser who knowingly and intentionally lists on a ~~resale~~ an exemption certificate  
8 personal property or services which the purchaser knows, at the time the ~~resale~~ exemption  
9 certificate is filed with the seller, ~~will not be resold~~ are not exempt, or provides an invalid ~~resale~~  
10 exemption certificate with the intent to evade payment of the tax, and fails to timely report the  
11 same with the department is guilty of a Class 1 misdemeanor. The secretary of revenue may  
12 assess a penalty of up to fifty percent of the tax owed, in addition to the tax owed. No interest  
13 may be charged on the penalty.

14 The seller shall retain the exemption certificate for a period of three years from the date it is  
15 filed by the purchaser and provide the exemption certificate to the department upon request.

16 The secretary may promulgate rules pursuant to chapter 1-26 to adopt forms for ~~resale~~  
17 exemption certificates.

18 Section 27. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as  
19 follows:

20 For purposes of the tax imposed by this chapter, a retailer shall source sales of tangible  
21 personal property and services to the location where the tangible personal property or service  
22 is received. The department shall promulgate rules, pursuant to chapter 1-26, defining the  
23 location of receipt. The rules promulgated pursuant to this section may provide an alternative  
24 method of sourcing telecommunication services.



Section 28. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as follows:

Registration under the agreement and collection of tax imposed under this chapter or chapter 10-46 does not in and of itself create nexus for other taxes or fees imposed by this state.

Section 29. That § 10-46-1 be amended to read as follows:

10-46-1. Terms, as used in this chapter mean:

(1) "Business," any activity engaged in by any person or caused to be engaged in by ~~him~~ such person with the object of gain, benefit or advantage either direct or indirect;

(2) "Delivery charges," charges by the retailer for preparation and delivery to a location designated by the purchaser of tangible personal property or services including transportation, shipping, postage, handling, crating, and packing;

(3) "Fair market value," the price at which a willing seller and willing buyer will trade. Fair market value shall be determined at the time of purchase. If a public corporation is supplying tangible personal property that will be used in the performance of a contract, fair market value shall be determined pursuant to § 5-18-5.1. This definition also applies to chapter 10-45;

~~(3)~~(4) "Included in the measure of tax," the tangible personal property or the service was purchased from a retailer licensed under chapter 10-45 and that retailer has included the tax in the amount received from the sale;

~~(4)~~(5) "In this state" or "in the state," within the exterior limits of the State of South Dakota and includes all territory within such limits owned by or ceded to the United States of America;

~~(5)~~(6) "Purchase," any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration. A transaction, whereby the

possession of property is transferred but the seller retains the title as security for the payment of the price, is a purchase;

~~(6)(7)~~ "Purchase price" or "sales price," the total amount for which tangible personal property is sold, including any services that are part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service cost, interest charged, losses or any other expense whatsoever. However, cash discounts allowed and taken on sales may not be included shall have the same meaning as gross receipts defined in subdivision 10-45-1(4);

~~(7)(8)~~ "Retailer," any person performing services in this state or engaged in the business of selling tangible personal property for use, storage or other consumption within the meaning of this chapter. However, if in the opinion of the secretary of revenue, it is necessary for the efficient administration of this chapter to regard any salesmen, representatives, truckers, peddlers, or canvassers as agents of the dealers, distributors, supervisors, employers, or persons under whom they operate or from whom they obtain the tangible personal property sold by them irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the secretary of revenue may so regard them and may regard the dealers, distributors, supervisors, employers, or persons as retailers for purposes of this chapter;

~~(8)(9)~~ "Retailer maintaining a place of business in the state," any retailer having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agents operating within the

1 state under the authority of the retailer or its subsidiary, irrespective of whether such  
2 place of business or agent is located here permanently or temporarily or whether such  
3 retailer or subsidiary is admitted to do business within this state pursuant to the laws  
4 of the State of South Dakota granting the rights of foreign corporations to do  
5 business in this state;

6 ~~(9)~~(10) "Secretary," the secretary of the Department of Revenue or any duly  
7 authorized and appointed assistant, deputies, or agents of the secretary charged  
8 with the administration or enforcement of this chapter;

9 ~~(10)~~(11) "Storage," any keeping or retention in this state for use or other consumption  
10 in the State of South Dakota for any purpose except sale in the regular course  
11 of business;

12 ~~(11)~~(12) "Tangible personal property," tangible goods, wares, merchandise, gas, and  
13 electricity if furnished or delivered to consumers or users within this state;

14 ~~(12)~~(13) "Use," the exercise of right or power over tangible personal property incidental  
15 to the ownership of that property, except that it does not include the sale of  
16 that property in the regular course of business. Use also includes the use of the  
17 types of services, the gross receipts from the sale of which are to be included  
18 in the measure of the tax imposed by chapter 10-45, and any amendments  
19 thereto and the delivery or causing delivery into this state of tangible personal  
20 property intended to advertise products or services or promote or facilitate  
21 sales to South Dakota residents.

22 Section 30. That chapter 10-46 be amended by adding thereto a NEW SECTION to read as  
23 follows:

24 There are exempted from the provisions of this chapter and the tax imposed by it, the use of

1 parts or repairs on machinery or equipment which are clearly identifiable as used primarily for  
2 agricultural purposes, including irrigation equipment, if the part replaces a farm machinery or  
3 irrigation equipment part assigned a specific or generic part number by the manufacturer of the  
4 farm machinery or irrigation equipment.

5 Section 31. That § 10-59-27 be amended to read as follows:

6 10-59-27. Any taxpayer who has received written advice from the Department of Revenue  
7 concerning the taxability of transactions shall be allowed to rely on such advice when filing tax  
8 returns. However, the taxpayer shall maintain a copy of the advice in ~~their~~ the taxpayer's business  
9 records. The department may not maintain a position against a taxpayer which is inconsistent  
10 with a prior written opinion issued to the same taxpayer unless rescinded by the department, by  
11 a change in statutory law or reported case law, by a change in federal interpretation in cases if  
12 the department's written advice was predicated upon a federal interpretation or by a change in  
13 material facts or circumstances relating to the taxpayer. For the purposes of this section, written  
14 advice includes municipal boundary information, and zip codes and addresses located within  
15 municipalities provided by the department.

16 Section 32. That § 10-52-2 be amended to read as follows:

17 10-52-2. Any incorporated municipality within this state may impose any non-ad valorem tax  
18 in accordance with the provisions of this chapter, except upon fuel used for motor vehicles, by  
19 ordinance enacted by its local governing board. However, no tax may be levied on the sale, use,  
20 storage and consumption of items taxed under chapters 10-45 and 10-46, unless such tax  
21 conforms in all respects to the state tax on such items with the exception of the rate, and the rate  
22 levied does not exceed two percent.

23 ~~—If a municipality increases its tax rate above one percent, the revenue generated from the tax~~  
24 ~~increase may only be used for capital improvement, to include lease-purchase agreements of~~

1 ~~realty, land acquisition, the funding of public ambulances and medical emergency response~~  
2 ~~vehicles, public hospitals, or nonprofit hospitals with fifty or fewer licensed beds, and other~~  
3 ~~public health care facilities or nonprofit health care facilities with fifty or fewer licensed beds, the~~  
4 ~~transfer to the special 911 fund authorized by § 34-45-12, the purchasing of fire fighting vehicles~~  
5 ~~and equipment, debt retirement and the minor rehabilitation, major rehabilitation, or~~  
6 ~~reconstruction of streets as defined in the June, 1994, South Dakota Department of~~  
7 ~~Transportation Pavement Condition Survey Guide for City Streets.~~

8 Section 33. That § 10-52-2.1 be repealed.

9 ~~—10-52-2.1. All local taxes duly enacted under § 10-52-2 before July 3, 1977, are hereby~~  
10 ~~ratified and may continue in force, provided, that no rate, which as of July 1, 1977, is in excess~~  
11 ~~of the rate specified in § 10-52-2, shall be increased.~~

12 Section 34. That § 10-52-2.5 be repealed.

13 ~~—10-52-2.5. The gross receipts from selling food, as defined by the Food Stamp Act of 1977~~  
14 ~~(P.L. 95-113), codified at 7 U.S.C. § 2012(g), as amended through January 1, 1983, in rules~~  
15 ~~promulgated pursuant thereto, are exempt from the provisions of this chapter and from the tax~~  
16 ~~imposed by it if the tax rate imposed by a municipality through the provisions of § 10-52-2 is in~~  
17 ~~excess of one percent. The provisions of this section do not apply to municipalities qualifying~~  
18 ~~under § 10-52-2.1 unless such municipalities increase their existing non-ad valorem tax and the~~  
19 ~~new rate is in excess of one percent. A municipality may, by local option, exempt food, as~~  
20 ~~defined by the Food Stamp Act of 1977 (P.L. 95-113), codified at 7 U.S.C. § 2012(g), as~~  
21 ~~amended through January 1, 1983, from the tax imposed by § 10-52-2 if the tax rate is one~~  
22 ~~percent or less. A municipality with a tax rate in excess of one percent on January 1, 1983,~~  
23 ~~pursuant to § 10-52-2.1, may, by local option, exempt food, as defined by the Food Stamp Act~~  
24 ~~of 1977 (P.L. 95-113), codified at 7 U.S.C. § 2012(g), as amended through January 1, 1983,~~

1 ~~from the tax.~~

2 Section 35. That § 10-52-2.6 be repealed.

3 ~~—10-52-2.6. Parts or repairs on machinery or equipment which are clearly identifiable as used~~  
4 ~~primarily for agricultural purposes, if the part replaces a farm machinery part assigned a specific~~  
5 ~~or generic part number by the manufacturer of the farm machinery, farm machinery and~~  
6 ~~equipment, and agricultural animal health products and medicines are exempt from the tax~~  
7 ~~imposed by this chapter.~~

8 Section 36. That § 10-52-2.9 be repealed.

9 ~~—10-52-2.9. Any municipality which increases its tax rate above the rate it had on January 1,~~  
10 ~~1983, may exempt therefrom those items which were exempt before the increase.~~

11 Section 37. That § 10-52-3 be amended to read as follows:

12 10-52-3. Any tax imposed by the governing board of any municipality pursuant to the  
13 provisions of this chapter, may be referred to a vote of the people for its approval or disapproval  
14 in the same manner as provided in §§ 9-20-7, 9-20-8, and 9-20-10. A tax imposed by municipal  
15 ordinance which was in effect on December 31, 2005, is continued under the provisions of this  
16 chapter if:

17 (1) The governing board of the municipality has reviewed the existing tax ordinance to  
18 determine compliance with the provisions of this chapter; and

19 (2) The governing board of the municipality documents the review, any amendment, and  
20 the intent to continue the tax in the official minutes of the governing board.

21 Any amendment made by the municipality to comply with the provisions of this Act or the  
22 determination to continue the tax under the provisions of this chapter is deemed to be an  
23 administrative decision pursuant to § 9-20-19 and is not subject to referendum.

24 Section 38. That § 10-52-2.10 be amended to read as follows:

1        10-52-2.10. Any incorporated municipality imposing a non-ad valorem tax in accordance  
2        with § 10-52-2, ~~or imposing an additional non-ad valorem tax in accordance with § 10-52-8,~~ may  
3        issue municipal non-ad valorem tax revenue bonds pursuant to this section and chapter 6-8B in  
4        anticipation of the collection of the taxes. The bonds shall be payable solely from the collections  
5        of the taxes imposed by the municipality under § 10-52-2 ~~or 10-52-8, or both,~~ as determined by  
6        the governing body. The governing body shall, in the resolution or ordinance authorizing the  
7        bonds, agree that it will continue to impose and collect the taxes so long as the bonds are  
8        outstanding. The governing body shall also pledge so much of the collections of the taxes as may  
9        be necessary to pay the principal premium and interest on the bonds and to maintain any debt  
10       service reserve established for the bonds. The For bonds issued prior to January 1, 2006, the  
11       proceeds of the bonds may be used for land acquisition, the funding of public ambulances and  
12       medical emergency response vehicles, public hospitals or nonprofit hospitals with fifty or fewer  
13       licensed beds and other public health care facilities or nonprofit health care facilities with fifty  
14       or fewer licensed beds, capital asset acquisition and capital improvements, to establish a debt  
15       service reserve fund for the bonds and to pay not more than one year's capitalized interest on the  
16       bonds. ~~If the proceeds of the tax imposed by § 10-52-8 are pledged to payment of the bonds, the~~  
17       ~~land acquisition and capital improvements financed with the proceeds of the bonds shall relate~~  
18       ~~to the purposes enumerated in § 10-52-8.~~

19       No election is required to authorize the issuance of municipal non-ad valorem tax revenue  
20       bonds. The bonds shall be issued and sold as provided in chapter 6-8B.

21       Section 39. That § 10-52-8 be repealed.

22       ~~10-52-8. Notwithstanding the tax rate limitations of § 10-52-2 or 10-52-2.1, any municipality~~  
23       ~~may impose an additional municipal non-ad valorem tax at the rate of one percent upon the gross~~  
24       ~~receipts of all leases or rentals of hotel, motel, campsites, or other lodging accommodations~~

~~within the municipality for periods of less than twenty-eight consecutive days, or sales of alcoholic beverages as defined in § 35-1-1, or establishments where the public is invited to eat, dine, or purchase and carry out prepared food for immediate consumption, or ticket sales or admissions to places of amusement, athletic, and cultural events, or any combination thereof. The tax shall be levied for the purpose of land acquisition, architectural fees, construction costs, payments for civic center, auditorium, or athletic facility buildings, including the maintenance, staffing, and operations of such facilities and the promotion and advertising of the city, its facilities, attractions, and activities. Such taxes shall conform in all respects to the state sales and use tax on such items with the exception of the rate.~~

Section 40. That § 10-52-9 be amended to read as follows:

10-52-9. Notwithstanding § 9-19-13, any new ordinance or amendment to an ordinance enacted under the authority of this chapter, and any tax rate affected thereby, can be effective only on January first or July first of a calendar year. The ordinance or amendment shall be effective on the earlier of January first or July first following at least ~~sixty~~ ninety days notification by the municipality to the secretary of revenue that the ordinance or amendment has been enacted unless the ordinance or amendment is suspended by operation of a referendum. If an ordinance or amendment enacted under this chapter is referred and the referred ordinance or amendment is approved the effective date is the earlier of January first or July first following at least ~~sixty~~ ninety days notification by the municipality to the secretary of revenue that the ordinance or amendment has been approved notwithstanding § 9-20-15. Notification of the enactment or approval of the ordinance shall be in writing and mailed, along with a copy of the ordinance or amendment, by registered or certified mail to the secretary of revenue.

Section 41. That § 10-52-11 be repealed.

~~10-52-11. Veterinarian services (group no. 074) and animal specialty services except~~



1 ~~veterinary (industry no. 0752) as enumerated in the Standard Industrial Classification Manual,~~  
2 ~~1987, as prepared by the Statistical Policy Division of the Office of Management and Budget,~~  
3 ~~Office of the President are exempt from the provisions of this chapter. In addition, there are~~  
4 ~~specifically exempted from the provisions of this chapter and the computation of the tax imposed~~  
5 ~~by it, gross receipts from transportation services and the collection and disposal of solid waste.~~

6 Section 42. That § 10-52-12 be repealed.

7 ~~10-52-12. The following services enumerated in the Standard Industrial Classification~~  
8 ~~Manual, 1987, as prepared by the Statistical Policy Division of the Office of Management and~~  
9 ~~Budget, Office of the President are exempt from the provisions of this chapter: establishments~~  
10 ~~primarily engaged in air transportation, noncertified carriers (group no. 452).~~

11 Section 43. That § 10-52-13 be amended to read as follows:

12 10-52-13. For purposes of this chapter, any new resolution or amendment enacted by a  
13 municipality which changes the boundaries of the municipality is effective on the first day of the  
14 first month following at least ~~sixty~~ ninety days notification by the municipality to the secretary  
15 of revenue that the resolution or amendment has been enacted unless the ordinance or  
16 amendment is suspended by operation of a referendum. If a resolution or amendment enacted  
17 pursuant to chapter 9-4 is referred and the referred resolution or amendment is approved, the  
18 effective date is the first day of the first month following at least ~~sixty~~ ninety days notification  
19 by a municipality to the secretary of revenue that the resolution or amendment has been  
20 approved. The municipality shall provide written notification of the enactment or approval of the  
21 resolution or amendment, along with a copy of the resolution or amendment by registered or  
22 certified mail or by any electronic means to the secretary of revenue. The municipality shall also  
23 provide any changes or additions to streets and addresses.

24 Section 44. That chapter 10-52 be amended by adding thereto a NEW SECTION to read

1 as follows:

2 For the purposes of the tax imposed by this chapter, the transportation of tangible personal  
3 property and passengers shall be taxed only if the origins and destination of the property or  
4 passenger are within the same municipality.

5 Section 45. The Legislature hereby finds that the amendments to chapter 10-52 contained  
6 in this Act shall result in a broader and more uniform tax base for the sales tax levied by  
7 municipalities under this chapter, and that, absent a reduction in the current tax levy of a  
8 municipality, it is anticipated that total sales tax revenues of a municipality may increase as a  
9 result of these amendments. However, so long as a municipality has any bonds or other  
10 obligations outstanding which are secured directly or indirectly by the pledge or collection and  
11 application of sales taxes levied pursuant to chapter 10-52 as in effect immediately prior to  
12 January 1, 2006, no municipality may reduce its tax levy under chapter 10-52 to a rate which,  
13 in the exercise of the sound discretion of the governing body, would be expected to produce less  
14 total revenue than was collected in the immediately preceding year.

15 Section 46. Sections 18, 19, 20, 21, 30, 32, 33, 34, 35, 36, 41, 42, and 44 are effective on  
16 January 1, 2006.

17 Section 47. Except as may be required by section 45 of this Act, it is the intent of the  
18 Legislature that the provisions of this Act be revenue neutral to all levels of government. Any  
19 municipality that has reviewed its sales tax ordinance as required by section 37 of this Act shall  
20 determine and enact a rate of taxation that, in the exercise of the sound discretion of the  
21 governing body, would be expected to produce no more total revenue than was collected in the  
22 immediately preceding year. However, nothing herein shall prohibit any increase in revenues that  
23 are projected to occur because of economic growth.

24 Section 48. Section 47 of this Act is repealed on January 1, 2007.

1       Section 49. Whereas, this Act is necessary for the support of the state government and its  
2       existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full  
3       force and effect from and after its passage and approval.